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SECOND REPORT OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 724 (1991) CONCERNING YUGOSLAVIA

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LETTER OF TRANSMITTAL

30 December 1992

Sir,

I have the honour to transmit herewith the second report of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia containing an account of the Committee's activities since the submission of its first report on 13 April 1992 (S/23800). The present report, which was adopted by the Committee at its 48th meeting on 29 December 1992, is being submitted in accordance with paragraph 5 (b) of Security Council resolution 724 (1991) of 15 December 1991 and paragraph 13 of resolution 757 (1992) of 30 May 1992.

Accept, Sir, the assurances of my highest consideration.

José AYALA LASSO
Chairman
Security Council Committee established
pursuant to resolution 724 (1991)
concerning Yugoslavia

His Excellency
Mr. Chinmaya Rajaninath Gharekhan
President of the Security Council

INTRODUCTION

1. On 13 April 1992, the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia submitted its first report to the Security Council (S/23800), outlining its activities during the period from its establishment, on 15 December 1991, until the adoption of its report, on 9 April 1992. During that period, the mandate of the Committee was to monitor the implementation by States of the mandatory arms embargo established by the Security Council in resolution 713 (1991) with respect to all the constituent republics of the former Socialist Federal Republic of Yugoslavia (see resolution 727 (1992), para. 6).

2. In its first report, the Committee highlighted its consideration of general matters and one case relating to possible violations of the arms embargo. The Committee stated that, at the time of adoption of its report, 99 States had responded to the Secretary-General's note of 16 December 1991 pursuant to paragraph 5 (a) of resolution 724 (1991) requesting all States to report the measures they had instituted for meeting the obligations set out in paragraph 6 of resolution 713 (1991). Of the responding States, 49 had been requested by the Committee to supply more information on the specific measures they had instituted.

3. The Committee adopted the present report at its 48th meeting, on 29 December 1992. The report is intended to present a factual summary of the Committee's activities during the period since the first report was adopted, in which time the Security Council has significantly increased the scope of sanctions and, correspondingly, the role of the Committee. Since 9 April 1992, the Committee has held 39 meetings, 3 of them on an emergency basis (in order to consider requests for the approval of imminent flights from, or back to, the Federal Republic of Yugoslavia (Serbia and Montenegro) and has handled over 2,000 incoming communications relating to various aspects of the implementation of the mandatory sanctions, as well as a comparable number of replies. In addition, the members of the Committee have studied 26 information notes consisting of materials gleaned by the Committee's secretariat from published sources, on the basis of which the Committee has on three occasions decided to address letters to States with requests for investigations to be undertaken into the suspect activities as reported.

I. EXPANDED SCOPE OF THE MANDATORY SANCTIONS AND OF THE ROLE OF THE COMMITTEE

A. New scope of the mandatory sanctions

4. During the period covered by the present report, the Security Council has significantly expanded the scope of its mandatory sanctions relative to the Federal Republic of Yugoslavia (Serbia and Montenegro). 1/ While the mandatory arms embargo established by the Security Council under resolution

713 (1991) with respect to all the constituent republics of the former Socialist Federal Republic of Yugoslavia remains in effect, the Council has adopted three new resolutions relating to sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro), as follows.

5. By resolution 757 (1992), adopted on 30 May 1992, the Security Council, acting under Chapter VII of the Charter of the United Nations, imposed a wide range of mandatory sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro). The full range of those sanctions is contained in paragraphs 4 to 9 of the resolution.

6. By resolution 760 (1992) of 18 June 1992, the Council expanded the exceptions to the prohibitions in paragraph 4 (c) of resolution 757 (1992) conditioned on the Sanctions Committee's approval on a case-by-case basis.

7. By resolution 787 (1992) of 16 November 1992, the Security Council, again acting under Chapter VII of the Charter, tightened the procedures for implementing the mandatory sanctions established in resolutions 713 (1991) and 757 (1992). The full range of those procedural measures is contained in paragraphs 9 to 15 of resolution 787 (1992).

B. Expanded role of the Committee

8. In the resolutions referred to above, the Security Council correspondingly expanded the mandate and role of the Committee established pursuant to resolution 724 (1991), as indicated below.

9. Paragraph 13 of resolution 757 (1992) reads as follows:

> "The Security Council,
>
> ...
>
> "13. Decides that the Committee established by resolution 724 (1991) shall undertake the following tasks additional to those in respect of the arms embargo established by resolutions 713 (1991) and 727 (1992):
>
> "(a) To examine the reports submitted pursuant to paragraph 12 above;
>
> "(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the measures imposed by paragraphs 4 to 9 above;
>
> "(c) To consider any information brought to its attention by States concerning violations of the measures imposed by paragraphs 4 to 9 above and, in that context, to make recommendations to the Council on ways to increase their effectiveness;

"(d) To recommend appropriate measures in response to violations of the measures imposed by paragraphs 4 to 9 above and provide information on a regular basis to the Secretary-General for general distribution to Member States;

"(e) To consider and approve the guidelines referred to in paragraph 6 above;

"(f) To consider and decide upon expeditiously any applications for the approval of flights for humanitarian or other purposes consistent with the relevant resolutions of the Council in accordance with paragraph 7 above."

10. Under resolution 760 (1992) the Security Council decided that:

"The prohibitions in paragraph 4 (c) of resolution 757 (1992) concerning the sale or supply to the Federal Republic of Yugoslavia (Serbia and Montenegro) of commodities or products other than medical supplies and foodstuffs, and prohibitions against financial transactions related thereto, contained in resolution 757 (1992), shall not apply, with the approval of the Committee established by resolution 724 (1991) under the simplified and accelerated no objection procedure, to commodities and products for essential humanitarian need."

11. Paragraph 9 of resolution 787 (1992) reads as follows:

"The Security Council,

...

"9. Decides, acting under Chapter VII of the Charter of the United Nations, in order to ensure that commodities and products transshipped through the Federal Republic of Yugoslavia (Serbia and Montenegro) are not diverted in violation of resolution 757 (1992), to prohibit the transshipment of crude oil, petroleum products, coal, energy-related equipment, iron, steel, other metals, chemicals, rubber, tyres, vehicles, aircraft and motors of all types unless such transshipment is specifically authorized on a case-by-case basis by the Committee established by resolution 724 (1991) under its no-objection procedure."

12. Taking into account the provisions of resolution 757 (1992), the Committee, at its 13th meeting, on 18 June 1992, adopted a new set of guidelines for the conduct of its work. The new guidelines, consolidated with the earlier guidelines in respect of the arms embargo (see S/23800, para. 5), were transmitted to all States and international organizations on 7 July 1992. The guidelines were subsequently amended, and States were notified of the amendment on 30 July 1992. Following the Council's adoption of resolution 787 (1992), the Committee found it necessary to formulate additional guidelines, which it adopted at its 48th meeting, on 29 December 1992, incorporating certain additional amendments to the existing

guidelines. The Committee decided to consolidate all the guidelines into a single document, to be transmitted to all States and international organizations.

II. SUMMARY OF THE COMMITTEE'S WORK DURING THE REPORTING PERIOD

A. General observations

13. It is against the background indicated above that the Committee has undertaken the mandate entrusted to it by the Security Council. In view of the fact that full responsibility for the implementation of the mandatory sanctions rests with States and, where specifically indicated, international organizations, the Committee has noted that either the Secretary-General or the United Nations Secretariat, as appropriate, has drawn the attention of the States and international organizations concerned to the obligations assigned to them by the Security Council in the relevant resolutions, as follows:

(a) On 30 May 1992 the Secretary-General transmitted the text of resolution 757 (1992) to the Federal Republic of Yugoslavia (Serbia and Montenegro) and to all States on 3 June 1992, drawing their attention to the relevant provisions of the resolution. The attention of all international organizations was similarly drawn by the Secretariat to the same provisions on 3 June 1992;

(b) On 18 June 1992 the Secretary-General transmitted the text of resolution 760 (1992) to the Federal Republic of Yugoslavia (Serbia and Montenegro) and to all States on 24 June 1992, drawing their attention to the relevant provisions of the resolution;

(c) On 16 November 1992 the Secretary-General transmitted the text of resolution 787 (1992) to the Federal Republic of Yugoslavia (Serbia and Montenegro) and to all States on 20 November 1992, drawing their attention to the relevant provisions of the resolution.

14. Since the Committee's first report, 12 more replies have been received to the Secretary-General's original note of 16 December 1991 pursuant to paragraph 5 (a) of resolution 713 (1991) (see S/23358/Add.4). With regard to resolution 757 (1992), replies from 59 States had been received by the stipulated deadline of 22 June 1992 to the Secretary-General's note of 3 June 1992, requesting them to indicate the measures they had instituted for meeting the obligations set out in paragraphs 4 to 9 of that resolution. As of 9 October 1992, 38 more States had responded, bringing the total to 97 (see S/24221 and Add.1 and 2). Since then, two further replies have been received.

B. Summary of the Committee's activities

15. During the period under review, the Committee has devoted most of its time to the consideration of matters arising from the more than

2,000 communications submitted to it to date by States, international organizations and, in 16 instances, by non-governmental organizations (NGOs) and individuals. The communications have, for the most part, consisted of notifications of the export of foodstuffs and medical supplies to the Federal Republic of Yugoslavia (Serbia and Montenegro); requests for approval for the supply to that country of commodities and products for essential humanitarian need; applications for exemptions from the sanctions, where permitted by the Security Council; requests for approval of transshipments of certain specified commodities and products through the Federal Republic of Yugoslavia (Serbia and Montenegro); reports of violations or suspected violations of the sanctions; and general questions with regard to the implementation of the sanctions regime.

C. Consideration of general substantive matters

16. From the outset, the Committee has adopted a general principle that, in considering requests from States or international organizations under the various resolutions, it would not grant generic or standing approval in respect of such requests, but would consider specific requests on a case-by-case basis. There are, however, a number of general cases on which the Committee felt that, for purposes of propriety, good order and practical convenience, a standing approval could be granted, provided that advance notification was given to the Committee in most of the cases. The Committee granted such general authorization with respect to the following:

(a) Payment of foreign pension benefits to persons in the Federal Republic of Yugoslavia; 2/

(b) Fees and dues collectible by embassies and consulates of the Federal Republic of Yugoslavia (Serbia and Montenegro);

(c) Goods and mail going to the Federal Republic of Yugoslavia (Serbia and Montenegro) for the use of diplomatic and consular missions there;

(d) Transit fees or other customs dues for ordinary commercial traffic in transit through the Federal Republic of Yugoslavia (Serbia and Montenegro); 3/

(e) Certain requests by international humanitarian organizations, with respect to which the Committee agreed that several shipments of their aid materials might be effected to the Federal Republic of Yugoslavia (Serbia and Montenegro) within a given period of time, say one month. Alternatively, specific amounts of such materials might be approved for shipment on any number of trips;

(f) Flights by the United Nations Protection Force (UNPROFOR), authorized by the Security Council in paragraph 10 of resolution 757 (1992), as well as flights by the Secretary-General's Special Representative and Co-Chairman of the International Conference on the Former Socialist Federal

Republic of Yugoslavia undertaken by him or under the auspices of his office in furtherance of his activities.

17. The Committee has also formulated general principles regarding the repatriation of goods from the Federal Republic of Yugoslavia (Serbia and Montenegro) and the transfer, in certain specific cases, of personal belongings to and from that country. With regard to the repatriation of goods, the Committee decided that such goods could be removed from the Federal Republic of Yugoslavia (Serbia and Montenegro) after the coming into force of the provisions of resolution 757 (1992) if they did not originate in that country, if ownership of them had never been transferred to any interests in the Federal Republic of Yugoslavia (Serbia and Montenegro), if they had not been transformed while in the Federal Republic of Yugoslavia (Serbia and Montenegro), and if their use in that country was never under the control of such interests. As for personal belongings to be transferred to or from the Federal Republic of Yugoslavia (Serbia and Montenegro), the Committee decided that the transfer of such items might be approved if they consisted purely of the personal and household effects of persons travelling to or from the Federal Republic of Yugoslavia (Serbia and Montenegro) or of citizens of the Federal Republic of Yugoslavia (Serbia and Montenegro) returning to that country from abroad.

18. In the course of its deliberations, the Committee has also reached a number of important decisions relating to the implementation of sanctions, among which the following deserve to be highlighted:

(a) The Committee decided that commercial activities by vessels owned wholly or mostly by interests in the Federal Republic of Yugoslavia (Serbia and Montenegro), regardless of the flag under which they sailed, were contrary to the mandatory sanctions established against that country. Specifically, the Committee decided that the continued operation of such vessels and any payments related thereto was prohibited. The Chairman reaffirmed the Committee's position on that matter in a statement issued to the press. The matter has now been settled by the Security Council. 4/ In addition, the Committee has noted that generally the provision of port services to such vessels is also prohibited;

(b) The Committee, in response to guidance sought by a riparian State member of the Danube Commission, advised that each riparian State had the authority and the obligation to enforce the sanctions on the Danube, to the maximum extent possible without the use of force and, if necessary, employing the minimum proportionate amount of force needed in order to stop the ship. The Committee's position was communicated to all States in a note dated 12 November 1992, with a copy to the Danube Commission. This position has now been reinforced by the Security Council; 5/

(c) At several of its meetings the Committee gave careful and sympathetic consideration to a request from the Prime Minister of the Federal Republic of Yugoslavia (Serbia and Montenegro), Mr. Milan Panic, and from the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to

authorize a certain amount of oil derivatives and natural gas to be imported exclusively for the operation of humanitarian institutions and services in that country. In response to the first letter from the Prime Minister of 22 September 1992, the Committee requested specific, detailed information concerning the energy situation in the country. The Committee was not satisfied with the information it subsequently received to that end and its members registered their concern about the absence of guarantees or controls to ensure that oil or gas imports, if authorized, would reach the intended recipients without diversion to other parties or uses. Upon consideration of the latest communication from Mr. Milan Panic dated 11 December 1992, the Committee suggested in its reply that the Prime Minister make contact with the relevant United Nations humanitarian organizations in order to prepare a plan that would verify and meet the humanitarian needs described in the Prime Minister's letter and provide satisfactory measures to ensure that any permitted products were to be distributed and consumed only to satisfy those needs. Upon receipt of such a plan the Committee will be in a position to take a decision on the matter expeditiously;

(d) The Committee responded quickly and positively to the request by the Government of Montenegro, communicated by the Federal Republic of Yugoslavia (Serbia and Montenegro), for authorization to import certain items and machinery required urgently in the aftermath of flash floods following heavy rains there during the month of October 1992. The Committee acted under its mandate on the basis that the required imports by Montenegro, some of which would ordinarily not be permitted under the sanctions regime, were justified for essential humanitarian need. The Committee's decision was predicated upon the agreement by the United Nations Department of Humanitarian Affairs to coordinate the supervision of the import, delivery and proper use of the requested items and machinery;

(e) The Committee declined a request by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to repatriate certain works of art described as Yugoslav following their exhibition in France, having received information indicating that there was a dispute as to the ownership of certain of the works among various republics of the former Socialist Federal Republic of Yugoslavia. The Committee considered that it was not in a position to determine the ownership of the items, nor was it able to authorize the shipment to the Federal Republic of Yugoslavia (Serbia and Montenegro) of items whose ownership was in dispute;

(f) The Committee, faced with several requests concerning participation by athletes from the Federal Republic of Yugoslavia (Serbia and Montenegro) in international sporting events, 6/ including the 1992 Olympic Games at Barcelona, among others, established a series of conditions under which Yugoslav athletes might participate in international sporting events, including:

(i) The athletes might not appear together or participate as part of a team, nor should they appear in any uniform, under any banner or flag, or have any anthem dedicated to them;

(ii) The relevant international organizations hosting the sports events must assume responsibility for the selection of such participating athletes;

(iii) The athletes might be accompanied by coaches, technical assistants or trainers, but not by any other personnel or by officials, governmental or non-governmental, from the Federal Republic of Yugoslavia (Serbia and Montenegro);

(iv) The athletes must not make any political statements or gestures, on pain of immediate expulsion from the games.

In each instance, these conditions have been communicated to the Government of the host country concerned.

D. Consideration of specific cases of actual or suspected violations of the mandatory sanctions established under resolutions 713 (1991), 757 (1992) and 787 (1992)

19. In its first report, the Committee dealt with only one specific case of reported violations of the sanctions, which was brought to the Committee's attention by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro). Since then, the Committee has opened 45 new cases, on the basis of information brought to its attention by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), by the Government of Romania, by the periodic reports submitted by the North Atlantic Treaty Organization/Western European Union (NATO/WEU) monitoring teams in the Adriatic Sea, from press reports contained in the information notes circulated to the Committee by its secretariat and from other sources. In response to the information submitted to it by the Federal Republic of Yugoslavia, the Committee requested 31 States to undertake investigations into the reports thus received; to date, replies have been received from 19 of those States. The information supplied by Romania has resulted in five States recently being requested to undertake similar investigations. With regard to the NATO/WEU reports, requests for investigations have been sent to 21 States, and replies from 11 of those States have so far been received. Information obtained from press reports has resulted in requests for investigation being sent to three States, of which one has so far replied.

20. In two specific cases that are still under consideration by the Committee, it has been established that violation of the sanctions did occur. One concerns the delivery of certain weapons and military equipment at the airport at Zagreb, Croatia, by an Iranian transport aircraft on 4 September 1992. The Committee decided that the weapons and military equipment seized by the Croatian authorities should be destroyed; this was done through the cooperation of the Croatian authorities and was witnessed and confirmed by UNPROFOR officials. This matter has already been drawn to the attention of the Security Council. The Committee is still waiting for an explanation from the Government of the Islamic Republic of Iran. The other case involves illegal trade in pharmaceuticals between companies in Slovenia

and in the Federal Republic of Yugoslavia (Serbia and Montenegro). The Committee has put a hold on any further exports of medical precursors to the companies in the Federal Republic of Yugoslavia (Serbia and Montenegro) involved until full explanations are submitted by the two Governments.

21. The Committee is also currently pursuing inquiries into the activities of three oil tankers, M/V Lakonia (given as being of Greek registry), M/V Thita Triton (given as being of Maltese registry) and M/V Thita Apollo (given as being of Panamanian registry), which have been reported by the NATO/WEU monitoring teams in the Adriatic Sea to have delivered large quantities of oil and gasoline to the Federal Republic of Yugoslavia (Serbia and Montenegro). The Committee is awaiting the results of investigations that have been requested of the States concerned.

22. Inquiries with respect to the remaining specific cases are ongoing and so far inconclusive. Thus, while investigations requested of the States conducting those inquiries are still continuing, and replies from all of them have not yet been received, it is not possible to reach any firm conclusions at the moment as to whether, or to what extent, violations of the sanctions have occurred in those cases.

III. FINAL OBSERVATIONS AND CONCLUSIONS

23. In the course of the performance of the mandate entrusted to it, the Committee has come to realize that the work under its charge is as arduous as it is complex. It is a matter of fact that the territory of the former Socialist Federal Republic of Yugoslavia, against which the sanctions are directed, lies at the hub of intense economic and cultural activity, international commerce, trade and industry in the south-eastern region of Europe. The task of monitoring the application of sanctions, in the circumstances, has not been easy. On the other hand, effective implementation of the sanctions has had an adverse impact on the economies of a number of countries, particularly those neighbouring the territory of the former Socialist Federal Republic of Yugoslavia, some of which have addressed the Committee on the matter.

24. The Committee has noted with concern that a number of Member States have not responded to the requests to them on the measures they were expected to institute for meeting the obligations set out in the relevant resolutions. Most importantly, the Committee has been disappointed by the lack of information on violations of the sanctions, especially by those States that are well placed to have access to such information, at the same time that the international press media have been replete with reports indicating that sanctions, including the arms embargo, are in fact being breached, sometimes in a blatant manner. It cannot be emphasized too strongly that the success of the sanctions programme as a measure available to the United Nations for settling international disputes by peaceful means depends on the active cooperation of all States.

25. The application of sanctions is the responsibility of States; the role of the Committee is to offer all possible assistance to States in undertaking their responsibility. But the absence of any independent monitoring mechanism of its own sometimes inhibits the ability of the Committee to obtain original information and to follow up on the requested investigations. In this regard, the Committee considers that Security Council resolution 787 (1992) has gone a long way in redressing this gap by authorizing States, acting nationally or through regional agencies or arrangements, to stop and search maritime vessels or vessels on the Danube in order to establish the bona fides of the cargoes on board. The Committee has been receiving periodic information from the NATO/WEU monitoring teams in the Adriatic, which it has passed on to the Governments concerned for the necessary investigations. The Committee is very grateful for this information and looks forward to continuing cooperation with NATO/WEU in that respect. The Committee will also seek the help and assistance of the sanctions assistance missions operating in certain countries in the area, with the cooperation of those countries, for the purpose of verifying the bona fides of commodities and products going to and from the regions of the former Socialist Federal Republic of Yugoslavia under the sanctions regime or through the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro).

26. If the Committee has achieved any success in the performance of its task, this has been due, in no small measure, to the hard work and cooperation of the members of the Committee as a team; they have rapidly dealt with numerous communications in a short period of time in order to reach pressing decisions and have exhibited a high sense of duty in their response to frequent invitations to meetings, often at very short notice. The work of the Committee has also been facilitated by the indefatigable efforts of the Committee's secretariat, which has always been dutifully and obligingly at the Committee's service.

Notes

1/ The Federal Republic of Yugoslavia comprises Serbia and Montenegro, which are two of the republics of the former Socialist Federal Republic of Yugoslavia.

2/ See, in this regard, the Committee's note dated 9 November 1992 addressed to all States and international organizations, notifying them of the Committee's decision.

3/ In this connection, the Committee was unable to authorize the transfer of a lump-sum payment of more than SwF 1 million in railway tolls submitted by a requesting Government as due to the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro).

4/ See resolution 787 (1992), para. 10.

5/ See resolution 787 (1992), para. 13.

6/ See resolution 757 (1992), para. 8 (b).